

THE CALIFORNIA SELF-DETERMINATION PILOT PROJECTS

The intent of self-determination is to facilitate consumer and family control of public funds such that they have the freedom to develop and purchase their own services.

FISCAL INTERMEDIARY

General Definition: A fiscal intermediary manages funds, makes payments, and accounts for expenditures made on behalf of the consumer as directed by the consumer, family, or circle of support. The fiscal intermediary is not a direct service provider, but handles the business end of securing services and supports. A fiscal intermediary can be a nonprofit agency, a payroll service, an individual, or any organization that the individual, family, or circle of support selects. A fiscal intermediary must be able to provide payroll services, bill payments, benefit administration, contract negotiation, rate setting functions, and record keeping services. Without a fiscal intermediary, the individual or family could be affected by state and federal labor laws¹, be responsible for filing tax records², and have additional obligations with regard to the Social Security Administration.

Key Functions of Fiscal Intermediaries

- **Fiscal Conduit:** Distributes funds to and/or on behalf of consumers. The fiscal intermediary may complete administrative tasks, such as collecting time sheets, submitting invoices, etc.
- **Employer of Record:** The fiscal intermediary is the employer of record for persons providing support services and is responsible for completing tax, labor, and social security documents as needed. The employer agent calculates and files tax documents, distributes wages to support providers, manages workers' compensation, disability, and benefit insurances, and verifies citizenship/legal alien status of support providers. The consumer hires, supervises, and discharges his or her support providers.

Examples from Other States

¹ The Employment Relationship

² Your Responsibilities as an Employer

1. Wisconsin - Fiscal Management Agencies Model

Dane County, Wisconsin (recipient of a grant from the Robert Wood Johnson Foundation Self-Determination Initiative) uses "Fiscal Management Agencies," local, nonprofit organizations, as fiscal intermediaries. At the direction of the consumer and support broker, the Fiscal Management Agency pays the bills for service providers, a service business (such as a professional employment agency) and supports identified by the consumer, family, or circle of support.

2. Massachusetts - Family Governing Boards

Massachusetts has set up "Family Governing Boards" as fiscal intermediaries that control the funding. Three of the Family Governing Boards assist with the budgeting and planning processes for individuals and families within their communities. Each Family Governing Board explores and develops resources within their respective communities. The Boards initiate collaboration with other funding sources and evaluate the existing services and supports. [For more information, go to MCARE web site <http://www.mcare.net>.]

THE EMPLOYMENT RELATIONSHIP

The relationship between an employer and employee is essential to establish before hiring someone to work in the home of a consumer in a self-determination service model. The following discussion is intended to assist those involved in a self-determination planning to assess the employment relationship.

When is Someone Considered an Employer?

The employment relationship is determined by looking at the relationship between the possible employee and employer. In determining an employee/employer relationship, the common law rule is used. This is the law of a country or state, based on custom, use, and the decisions or opinions of the courts. The California Employment Development Department makes a determination of who the employer is by using several factors, including:

- ✓ The employer's degree of control over the work.
- ✓ Whether or not there is a distinct occupation or the work is part of a regular

business.

- ✓ The skill required for the work.
- ✓ The length of time for which the employee is hired.
- ✓ The method of payment for work completed.
- ✓ The basis of the relationship created between employer/employee.
- ✓ Whether the work is usually done under direction of an employer or independently without supervision.
- ✓ Whether tools, supplies, and a place to work are supplied.
- ✓ Whether employees make business decisions that cause a profit or loss for themselves.

Example: A worker is hired to provide personal care in a consumer's home. The consumer hires the worker, provides the work place and the tools, sets the specific hours of work, and has the right to tell the worker what needs to be done and how to do it. Wages are paid based on the number of hours worked. In this example, the consumer will most likely be determined to be the employer. [For more information, contact the California Employment Development Department. Look in the telephone directory under "State of California, Government Listings" or use the Internet web site <http://www.edd.cahwnet.gov>.]

YOUR RESPONSIBILITIES AS AN EMPLOYER

If a consumer hires independent workers to provide them with services and supports and the workers are under the direct supervision of the consumer, then the workers are considered to be employees. The consumer's **employer role** takes on the responsibility for complying with labor laws, tax requirements and record keeping.

If you decide to hire workers and manage payroll, you must:

Obtain an Employer Identification Number.

Complete an Immigration & Naturalization Service Form 9 (INS-9) on all workers to assure their eligibility to work in the United States.

Keep proper records for each person employed.

Pay workers appropriately (e.g., minimum wage, frequency of pay) and keep proper records.

Observe Department of Labor wage requirements regarding minimum wage and overtime pay.

Adjust an employee's deductions when notified of the employee's eligibility on the Earned Income Credit Advance Payment Certificate.

Withhold Medicare and Social Security taxes (FICA) from worker's pay, if required.

Pay federal unemployment taxes from worker's pay, if required.

Withhold state income tax from worker's pay, if required.

Pay state unemployment taxes from worker's pay, if required.

Make federal tax deposits.

Make state tax deposits quarterly or monthly.

Withhold state/federal income taxes.

Issue Wage and Tax Statement to all workers and submit Transmittal of Income and Tax Statements to the Social Security Administration.

Pay workers' compensation insurance premiums for workers, if required.

Pay disability insurance premiums for workers, if required.

Keep all proper records on worker's hours, pay and tax payments.

[For more information go to EDD's Internet Web Site address: <http://www.edd.cahwnet.gov>]